Supreme Court, U. S.
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JUN 3 1980
MICHAEL RODAK, JR., CLERK

NO. 65, ORIGINAL

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

* * *

THE STATE OF TEXAS,
Plaintiff

V.

THE STATE OF NEW MEXICO,
Defendant

* * *

PETITION FOR REHEARING

* * *

Respectfully submitted,

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Pursuant to Rule 58 of the Rules of the Supreme Court, the State of Texas respectfully petitions for rehearing of its Exceptions to the Report of the Special Master in this cause, and in support thereof shows the Court the following:

On May 19, 1980, this Court issued its per curiam opinion approving the Special Master's Report and overruling both parties' Exceptions. Justice Stevens dissented, stating that the language of the Pecos River Compact indicated the signatory states' intent to define the "1947 condition" by means of the original routing study which accompanied the compact.

Original actions are implicitly recognized as one of the less favored children within the Supreme Court's jurisdiction, *cf. Arizona v. New Mexico*, 425 U.S. 794 (1976); *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972). This may account for a natural tendency to defer to

reports of special masters in such cases, especially when it appears that the master proposes a reasonable solution to a difficult and complex controversy.

Texas suggests, however, that such deference is inappropriate in the case at bar. The Special Master's Report, while presenting a superficially reasonable solution, serves neither the best interest of the parties to this litigation nor the interests of this Court in the final analysis.

The importance and desirability of interstate compacts as a means of resolving disputes between states, a means preferable to this Court's original jurisdiction, is well recognized, *e.g.*, *Colorado v. Kansas*, 320 U.S. 383 (1943); *Washington v. Oregon*, 214 U.S. 205 (1909). Approval of the Special Master's decision in this case seriously impairs the viability of interstate compacts.

As recognized in Justice Stevens' dissent, more fully discussed in Texas' Objections to the Report of the Special Master, the drafters of the Pecos River Compact carefully tied the term "1947 condition" to the original 1947 condition routing study. By approving the Master's Report, this Court allows a substantial modification of the original interstate agreement. The per curiam opinion, combined with the dissenting opinion, stands for the proposition that a state suffering under the sometimes heavy burden imposed by an interstate river compact may hope for some relief of that burden from the Court.

Two products of the decision are likely. First, the utility of interstate compacts will be reduced; refusal to comply with burdensome compact provisions will become more frequent as states realize they have an opportunity to better the original agreements reflected by their compacts. Second, more frequent resort to this Court's original jurisdiction will necessarily be sought by states which are the beneficiaries of the compact

provisions. Neither result is desirable, and both are avoidable if the Pecos River Compact's literal terms are given effect in this case.

CONCLUSION

While the Master's Report presents a superficially reasonable and equitable solution to this interstate controversy, it fails to honor the intent and express provisions of the Pecos River Compact. For this reason, it should be reversed. Such action by this Court would not only properly resolve the case at hand, it would constitute an endorsement of interstate compacts in preference to its own original jurisdiction as the proper means of resolving interstate disputes. Texas urges the Court to grant this Petition for Rehearing and reverse its decision affirming the Master's Report and overruling Texas' Exceptions to that report.

Respectfully submitted,

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PROOF OF SERVICE

I, DOUGLAS G. CAROOM, Assistant Attorney General of the State of Texas, one of the attorneys for the Plaintiff herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of _____, 1980, I served copies by First Class Mail, Postage Prepaid, to counsel for the State of New Mexico and the United States.

_____

DOUGLAS G. CAROOM